

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF**

76-1392

Docket No. 76-1392

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

THE UNITED STATES OF AMERICA

Plaintiff-Appellee

VS

PETER ALAN THOMAS Van VLECK

Defendant-Appellant

BRIEF FOR THE APPELLANT
PETER ALAN THOMAS VanVLECK

On Appeal from the United States District
Court for the Western District of New York

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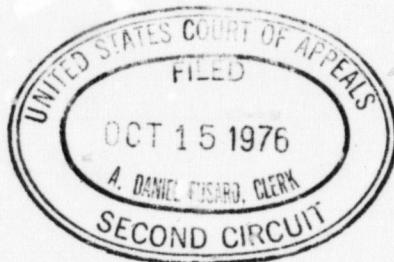


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STATUTES INVOLVED

18 U.S.C. 472

Whoever, with intent to defraud, passes, utters, publishes or sells, or attempts to pass, utter, publish or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation, or other security of the United States, shall be fined not more than \$5,000 or imprisoned not more than fifteen years, or both

18 U.S.C. 2

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

(b) Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal

18 U.S.C. 371

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. . . .

PRELIMINARY STATEMENT

Appellant PETER ALAN THOMAS Van VLECK, appeals from a jury verdict and sentencing of the HON. JOHN T. CURTIN, United States District Court Judge for the Western District of New York, entered July 19, 1976, convicting him of violations of Sections 472, 2 and 371 of Title 18 of the U.S.C.

Appellant was convicted of counts Six and Seven of the Indictment 1973-211. He was sentenced on the aforesaid date by Judge Curtin, after motions made May 12, 1976 pursuant to Rules of Criminal Procedure 29(c) and 33 were denied. On May 6th, the defendant moved for judgment of acquittal and dismissal of the indictment after Government rested and again at close of case. Motions were denied both times. The sentence was on counts Six and Seven - remanded to the custody of the Attorney General for a period of five (5) years. Sentences are to run concurrently.

Appellant duly filed a timely Notice of Appeal.

QUESTIONS PRESENTED

1. Whether there was adequate legal proof before the jury showing that Appellant did knowingly and with intent to defraud, attempt to sell approximately \$175,000 counterfeit money on May 17, 1973?
2. Whether the trial court committed error in denying defendant's motions for judgment of acquittal and dismissal of Indictment (twice) on May 6, 1976 and motions pursuant to Rules 29(c) and 33 made May 12, 1976 and denied at time of sentence July 19, 1976.

STATEMENT OF FACTS

The defendant was indicted May 24, 1973 with four co-defendants for violations of U.S.C. Title 18, Sections 371, 472 and 2. After various motions and a mistrial the case was moved for trial on May 4, 1976, against the defendant alone.

The other four defendants, JOSEPH CANNIZARO, a/k/a "Pepe" CANNIZARO, LORRAINE CZORA, EDWARD J. MOSCA and MICHAEL J. GATES, had entered pleas of guilty to the conspiracy count and three of them testified for the Government at trial.

The defendant was charged under Count VI with attempt to sell counterfeit obligation of the United States

on May 17, 1973 and under Count VII with conspiracy to effect the sale.

The witnesses MOSCA and CZORA, erstwhile co-defendants are the only witnesses to give direct testimony. The other four witnesses in the case were Secret Service agents whose only direct contact with the defendant is a photo of him with the witness CZORA (Government's Exhibit 11).

The initial contact with the agents was the witness CZORA and her friend BEVERLY ZOELLER who did not testify at trial.

The paper used to print the counterfeit obligations was purchased by MOSCA in Rochester, New York (Appx. P96-97).

The plates to print the counterfeit obligations were made by another former defendant, GATES (Appx. 95).

The other remaining former defendant CANNIZARO had direct contact with agent William J. Ebert relative to delivery of the counterfeit obligations (Appx. 11).

The defendant was not present when the acts charged in Count VI of the Indictment took place, at 808 Main Street, Buffalo, New York, on May 17, 1973. The other four defendants were arrested at or near there. Of the 20 overt acts delineated in the Indictment, the defendant appears but three (3) times, once with MOSCA and twice with CZORA (appx. 9-11).

⑧ The money was possessed and passed by CZORA, MOSCA and GATES.

The defendant CANNIZARO's case was transferred pursuant to Rule 20 on June 4, 1974 to the U.S. District Court for the Middle District of Florida at Jacksonville for plea and sentence.

On June 14, 1976, all the other former defendants CZORA, MOSCA and GATES were given a suspended sentence and placed on probation for three years.

POINT I

The record shows that on May 16, 1973 at 6:00 or 6:30 P.M., LORRAINE CZORA met EDDIE MOSCA at the Turf Club and entered into an agreement to sell \$175,000.00 counterfeit money to Marine (Secret Service Agent Ebert) eliminating and abandoning the defendant VAN VLECK. P. 37-39.

At approximately 6:30 P.M., Marine received a phone call from CZORA, that pick-up of the counterfeit money was a problem. Around 7:15 or 7:20 P.M., CZORA called back, telling him that delivery was ready and to meet at 808 Main Street, Mosca and Gates Printing Firm. The meeting was at 8 P.M. between CZORA, MOSCA and MARINE. Arrangements were made to pick-up the counterfeit money on the 17th of May, 1973 at 5 P.M. F.92-93,97.

It is evident that on May 16th, the only parties who did conspire and did knowingly and with intent to defraud, attempt to sell counterfeit money, were MOSCA and CZORA.

Appellant was not included in the conspiracy of the 16th, had no part therein and was not aware of the development thereof on that day or of the attempted consummation thereof. VanVLECK was abandoned. Appellant was in the same position as though he abandoned the deal, for MOSCA made it clear that in no way could Appellant receive the \$175,000 counterfeit money.

Viewed most favorably for the Government, Appellant could not be involved in the offense of May 16th and 17th, U.S. v. DeGORCES, 518 Fed. 156. The motion for judgment of acquittal ought to have been granted, and ought now be granted by the court.

POINT II

The Court erred in denying the motion to dismiss the indictment, and direct verdict of acquittal.

The cumulative evidence as given at the trial casts reasonable doubt as to whether defendant was a participant.

First, MICHAEL GATES' sworn statement, Court's Exhibit 39 (Appx.95) states "I never have seen any of the people that he (Mosca) was involved with." In the course of the trial he said he saw defendant at the shop on one occasion in March and again on another day, standing out in front of the shop. Even though he admits he did not observe him. Here is such glaring inconsistency as to nullify GATES' trial testimony.

EDWARD MOSCA's sworn statement, Court Exhibit 41

(Appx. 96) that he had driven to Rochester, New York to purchase counterfeiting paper. This is further recited in Overt acts #2 of the indictment and further supported by GATES' testimony and Agent Ebert's testimony (Appx. 61). Contrary to that statement, and the testimony of GATES and EBERT's, MOSCA, three years later says that he went to Rochester with Appellant to purchase the paper. Here too the inconsistency is supported against MOSCA by his printing partner, GATES and Agent Ebert.

MOSCA testified that he was persuaded by VanVLECK to go into the counterfeiting business and gave the appearance of a Pressured person. RICHARD BUCK testified that he had first met EDDIE MOSCA 11 years ago, while he (Buck) worked for Kenton Printing and MOSCA was employed at Keyser Beauty Supply. They id their counterfeiting at Kenton Printing and the aging and dying process at the homes of MOSCA and BUCK (Appx. 66-72). Subsequently Buck was arrested and while on bail, moved to Galetton, Pa. and secured employment. After receiving notice that he was to be sentenced in Lafayette, Louisiana, he called EDDIE MOSCA and they met in Wellsville at the Wellsville Hotel. MOSCA came with MIKE GATES. At Buffalo, they dropped GATES off at his home and MOSCA and BUCK had dinner at the Chicken Chalet and a drink at the Greyhound Bus Station (Appx. 74-75).

LC. RAINIE CZORA was well acquainted with EDWARD MOSCA, "PEPE" CANNIZARO and Appellant VanVLECK for the past 10 to 16

years. She is a divorcee, had numerous men living at her place, including Appellant about 3 or 4 years ago. She had an illegitimate child by another person, while CANNIZARO was her boyfriend for whom she wanted the counterfeit money. She attempted to cash a counterfeit \$20 and ran out of the store. Her testimony does bring the Appellant into the picture, but with some reservations, for her connection with MOSCA and CANNIZARO indicates a reasonable assumption that these three were the original conspirators. And further, that MOSCA's prior experience with BUCK is indicative that a victim had to be found prior to any undertaking in the event there was an arrest. The most valued witness to associate and connect Appellant to any transaction with CZORA, was BEVERLY ZOELLER, who by the testimony is shown to have actively participated in all money changing transactions and she was not brought in to testify by the Government. The logical conclusion must be that BEVERLY ZOELLER would not confirm any conspiracy to Appellant.

Accused's interest in an acquittal when prosecution has failed to present sufficient evidence to go to jury is one for trial judge to vindicate in first instance, but if trial judge fails in this assignment, appellate court will exercise its discretionary authority to provide that protection even if the defendant may have moved in the alternative for a new trial.
U.S. v. WILEY, 517 F.26, 1212.

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CONCLUSION

For the reasons set forth above, the Appellant's convictions should be reversed.

Respectfully submitted,

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